

Service Date: July 3, 2014

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Application of) REGULATORY DIVISION
NorthWestern Energy for Hydro Assets)
Purchase) DOCKET NO. D2013.12.85

**PREHEARING MEMORANDUM
OF THE MONTANA PUBLIC SERVICE COMMISSION**

Background

“A public utility that removed its generation assets from its rate base . . . prior to October 1, 2007, may apply to the [C]ommission for approval of an electricity supply resource that is not yet procured.” Mont. Code Ann. § 69-8-421 (2013). The Montana Public Service Commission (Commission) “may approve or deny” such an application “in whole or in part,” and “may consider all relevant information known up to the time that the administrative record in the proceeding is closed.” *Id.* The PSC must either find that preapproval is in the “public interest” and that the procurement is consistent with certain statutes and administrative rules, or describe why these findings could not be reached. *Id.* (requiring “an order within 270 days of receipt of an adequate application”).

On September 26, 2013, NorthWestern Corporation, doing business as NorthWestern Energy (NorthWestern) executed a Purchase and Sale Agreement with PPL Montana, LLC (PPL) to purchase its hydroelectric generating facilities in Montana. On October 11, 2013, NorthWestern notified the Commission that it would file an application seeking preapproval of the purchase no later than December 24, 2013. *See* Dkt. N2013.10.74. The Commission issued a *Notice of Opportunity for Early Intervention* on December 6, and granted intervention to the Montana Consumer Counsel (MCC) on December 20, 2013.

On December 20, 2013, NorthWestern filed its *Application for Hydro Assets Purchase* (Application) with *Direct Testimony* from the following individuals: Robert (Bob) C. Rowe, Brian B. Bird, John D. Hines, Travis E. Meyer, Joseph M. Stimatz, William T. Rhoads,

Ahmad Masud, Allen Otto, Kendall G. Kliewer, and Patrick J. DiFronzo.

The Commission issued a *Notice of Application and Intervention Deadline and Initial Procedural Schedule* on December 23, 2013, and granted intervention to the following parties on January 14, 2014: (1) Confederated Salish & Kootenai Tribes (CSKT); (2) Montana Large Customer Group; (3) Human Resource Council District XI and Natural Resources Defense Council (HRC/NRDC), as well as the Renewable Northwest Project; and (4) Hydrodynamics, Inc. The Renewable Northwest Project subsequently filed a *Notice of Withdrawal*.

On January 16, 2014, the Commission issued *Procedural Order 7323b*, in which it established a deadline of July 3, 2014 for this *Pre-Hearing Memorandum*.

The Commission engaged Evergreen Economics (Evergreen) to help review the analysis conducted by NorthWestern and Ascend Analytics. *See* Mont. Code Ann. § 69-8-421(10) (authorizing the Commission to “engage independent engineering, financial, and management consultants or advisory services to evaluate . . . proposed electricity supply resources.”). On January 24, 2014, Evergreen submitted a *Memorandum* (Evergreen Memo) assessing the adequacy of NorthWestern’s Application.

On February 3, 2014, the Commission determined that NorthWestern’s Application was not adequate because it did not model certain portfolios as alternatives to the proposed purchase, but that it would be adequate upon receipt of the additional models. *See* Mont. Code Ann. § 69-8-421 (requiring Commission to “determine whether or not the application is adequate and in compliance with [its] minimum filing requirements” within 45 days); *see also* Admin. R. Mont. 38.5.8228(2)(d) (requiring “estimates of the cost of the resource compared to the cost of each alternative resource the utility considered”). On February 14, 2014, NorthWestern filed the additional models with *Supplemental Testimony* from John Hines and Joseph Stimatz.

On March 27, 2014, Evergreen submitted its *Final Assessment* of NorthWestern’s Application.

On March 28, 2014, the MCC filed the *Direct Testimony of John W. Wilson*, who recommended “three consumer protection modifications” to “improve” the proposal. Direct Test. Wilson pp. 9, 64-65 (“It would also be appropriate to renegotiate a more acceptable price with PPL”). The MCC also filed the *Direct Testimony of Albert E. Clark*, who recommended additional “adjustments to the test year revenue requirement.” Direct Test. Clark p. 7 (“I am not recommending either that the preapproval of the purchase be allowed or disallowed.”).

In addition to Evergreen, the Commission also engaged The Essex Partnership (Essex) to review NorthWestern's due diligence efforts. Essex submitted a *Checklist* assessing the documents and projections underlying NorthWestern's due diligence on April 1, and a *Memorandum* (Essex Memo) summarizing its major findings on April 2, 2014.

On March 28, 2014, the HRC/NRDC filed the *Direct Testimony of Thomas M. Power*, who "focus[ed] on two issues that are important in the evaluation" of the hydro purchase: (1) "The economic implications of the developing regulation of carbon emissions from electric generating facilities"; and (2) "risks associated with owning and operating coal-fired electric generators." Direct Test. Power p. 1.

On April 4, 2014, the Commission directed NorthWestern to "address the structural integrity, physical condition, environmental liabilities, and the sufficiency of NorthWestern's due diligence effort for each of the individual facilities," and to provide "a fuller understanding of what the range of potential future [capital expenditure] and [operations and maintenance] costs might be and the effect of those potential costs on NorthWestern's net present value cost estimates."

On April 18, 2014, NorthWestern filed *Additional Issues Testimony* from the following individuals: William T. Rhoads, John C. VanDaveer, Mary Gail Sullivan, Gary T. Wiseman, Rick Miller, Travis E. Meyer, and Joseph M. Stimatz.

On May 9, 2014, NorthWestern filed *Rebuttal Testimony* from the following individuals: Bob Rowe, John Hines, Joseph Stimatz, Gary W. Dorris, William Rhoads, John VanDaveer, Mary Gail Sullivan, Gary Wiseman, Rick Miller, Brian Bird, Adrien M. McKenzie, Ahmad Masud, Kendall Kliever, and Patrick DiFronzo. The HRC/NRDC filed the *Response Testimony of Thomas M. Power*.

On May 30, 2014, the MCC filed the *Additional Issues Response Testimony of John W. Wilson*.

On June 17, 2014, the Commission issued a *Notice of Public Hearing*. The following parties filed pre-hearing memoranda on June 20, 2014: NorthWestern, MCC, HRC/NRDC, Montana Large Customer Group, and Hydrodynamics, Inc.

Pursuant to *Procedural Order 7323b*, the Commission hereby identifies: (1) Contested issues; (2) uncontested issues; (3) witnesses that it intends to call; (4) exhibits and responses to data requests that it intends to introduce (other than responses to data requests related to

additional issues response testimony); and (5) any special accommodations sought regarding witness sequence or scheduling. Or. 7323b pp. 5-6 (also requiring each party to “list any responses to data requests that the parties have collectively agreed to introduce.”).

Contested Issues

Excluding the uncontested issue described below, the Commission considers any issue raised by the Application, through pre-filed testimony, or as an additional issue to be contested. At the hearing, the Commission may also inquire about issues that were raised at listening sessions, or about the broader regulatory framework that has been implemented pursuant to Chapter 8, Title 69 of the Montana Code Annotated.

Uncontested Issues

Based on the *Direct Testimony of Albert E. Clark* and NorthWestern’s *Rebuttal Testimony*, the Commission considers the use of a 50-year book depreciation life to be an uncontested issue.

Witnesses

The Commission intends to call Myron Petrovsky and Fred Szufnarowski, two of the authors of the Essex Partnership Memo, and make them available for cross-examination.

Exhibits and Data Responses

The Commission may take administrative notice of “judicially cognizable facts,” as well as “generally recognized technical or scientific facts within the agency's specialized knowledge.” Mont. Code Ann. § 2-4-612(6) (parties “shall be afforded an opportunity to contest the material so noticed.”); *see also* Mont. R. Evid. 201 (“A fact to be judicially noticed must be one not subject to reasonable dispute in that it is either (1) generally known . . . or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.”).

At the hearing, the Commission may take administrative notice of or otherwise seek to introduce the following as evidence:

1. Any exhibit or document identified, referenced, or relied upon in pre-filed testimony or a data response, including but not limited to:

- a. Utility resource plans listed as sources to Figure 6-11 on page 6-27 of NorthWestern's 2013 Electricity Supply Resource Procurement Plan, as well as those listed in Data Response PSC-073a, and documents of those utilities that use the forecast carbon price to justify resource acquisitions;
 - b. Rules recently proposed by the Environmental Protection Agency pursuant to Section 111(d) of the Clean Air Act;
 - c. Dan Lashof and Starla Yeh, "Cleaner and Cheaper: Using the Clean Air Act to Sharply Reduce Carbon Pollution from Existing Power Plants, Delivering Health, Environmental and Economic Benefits," Natural Resources Defense Council, (March 2014); and
 - d. "FirstEnergy Completes Sale of Eleven Hydroelectric Power Stations to Harbor Hydro Holdings, LLC," https://www.firstenergycorp.com/content/fecorp/newsroom/news_releases/firstenergy-completes-sale-of-eleven-hydroelectric-power-station.html (Feb. 12, 2014);
 - e. Pacific Northwest Utilities Conference Committee 2014 Northwest Regional Forecast;
 - f. Northwest Power and Conservation Council (NPPC) price forecast for February 2013;
 - g. NPPC's Pacific Northwest Power Supply Adequacy Assessment for 2019;
2. Any document in the administrative record, including but not limited to:
 - a. Evergreen Memo;
 - b. Evergreen's *Final Assessment*;
 - c. Essex Memo;
 - d. Essex's *Checklist*;
3. Any data response that another party has not introduced;
4. Commission Comments on past NorthWestern Electricity Supply Resource Procurement Plans;
5. Any document used for impeachment purposes (although the Commission does not consider it necessary to introduce a document that is only being used for impeachment purposes), including but not limited to:
 - a. Data Response PSC-001a from Docket D2013.10.77 as it pertains to carbon pricing;
 - b. Data Response MCC-046 from Docket D2008.6.69 as it pertains to carbon pricing;
 - c. The Annual Report of Montana Power Company to the Federal Energy Regulatory Commission (FERC) for the year 1997;
 - d. NorthWestern's *Opposition to MCC's Motion for Reconsideration of Order 6925f* filed in Docket D2008.6.69 on December 2, 2008; and

6. Any relevant late filed exhibit from any party, including but not limited to the Energy Information Administration's 2014 Annual Energy Outlook.

In addition to the evidence introduced at the hearing, the Commission considers its own orders and FERC orders to be part of the case law and broader legal framework that could support a final decision.

Special Accommodations

The Commission intends to call Myron Petrovsky and Fred Szufnarowski as witnesses on Thursday, June 10.

BY THE MONTANA PUBLIC SERVICE COMMISSION

W. A. (BILL) GALLAGHER, Chairman

BOB LAKE, Vice Chairman

KIRK BUSHMAN, Commissioner

TRAVIS KAVULLA, Commissioner

ROGER KOOPMAN, Commissioner